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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/516,471

11/29/2004

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CU-5962

5737

26530 7590 06/25/2008

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EXAMINER

MENEZES, MARCUS

ART UNIT

PAPER NUMBER

3677

MAIL DATE

DELIVERY MODE

06/25/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/516,471	Applicant(s) MOUGHELBAY ET AL.	
	Examiner MARCUS MENEZES	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 70-72, 80, 85 and 86 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 70-72, 80, 85 and 86 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claim 80 is objected to because of the following informalities: -an- should be placed in front of “elongate portion” in the sixth line of the claim. Appropriate correction is required.

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claim 81 is not shown as cancelled. Examiner will interpret the line under claim 80 to read – 81-84. However, appropriate action by Applicant is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 80 and 85 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, “elongate portion of the member” is recited in the third and second last lines of each claim respectively. Shouldn't said portion read - enlarged portion? (See page 5, lines 5-10 of Applicant's specification.).

The only portion in Applicant's drawings that "has a transverse width greater than a corresponding transverse width of the hole" is planar enlarged portion. Clarification is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

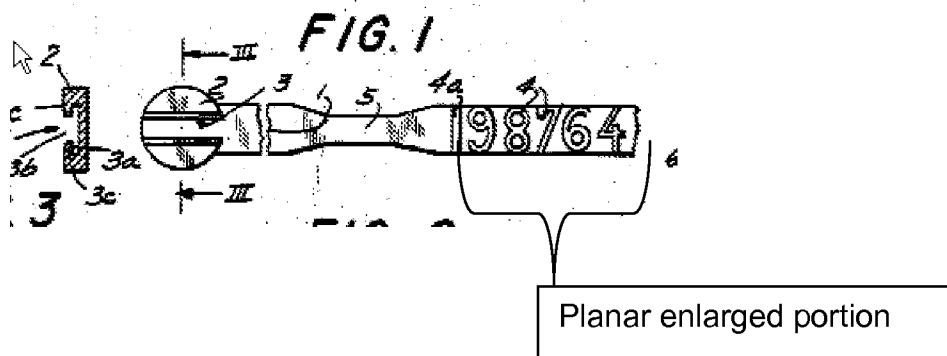
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 70, 72 and 80 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Schumm (US 3,147,522).

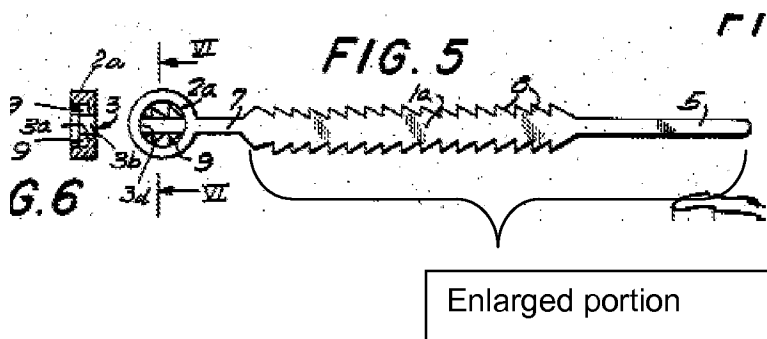
Regarding claim 70, Schumm discloses a system comprising a respective tying device, wherein each tying device comprises an elongate member (1) for releasable securement at a cable by wrapping around the cable; a planar enlarged portion arranged on the member for insertion through a hole (3a) in the member, the enlarged portion including a raised portion (4) thereon to provide that part of the enlarged portion with a thickness greater than a remainder (5) of the enlarged portion; wherein the device being configured such that the enlarged portion can be passed from one side of the member, completely through the hole, to an opposite side of the member to be secured at the opposite side; and wherein the elongate member has the same thickness as the remainder of the planar enlarged portion. (See figures 1 and 2 and below).

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Regarding claim 72, Schumm discloses that the enlarged portion of the device at least is made of a flexible material. (See col.3, lines 8-15).

Regarding claim 80, Schumm discloses a card (fig. 16) comprising a plurality of detachable elongate members, each of the members being frangibly joined to the card for detachment therefrom, an enlarged portion being defined in at least one of the members for insertion in use through a hole (3a) located in the at least one member, the enlarged portion being insertable through a hole located in the at least one member; wherein an elongate and enlarged portion has a transverse width greater than a corresponding transverse width of the hole. (See figure 5 below).



Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 71 and 85-86 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schumm.

Regarding claim 71, Schumm discloses the invention, as applied to claim 70 above and includes that indicia is pre-applied on an external surface of the raised portion (4), wherein said indicia is the shape of said external surface. Note, said indicia constitutes any marking on the raised portions. It would have been an obvious matter of design choice to one of ordinary skill in the art at the time the invention was made to have the raised portion include indicia for aesthetic and/or identification purposes.

Additionally, from MPEP 2112.01 [R-3], III:

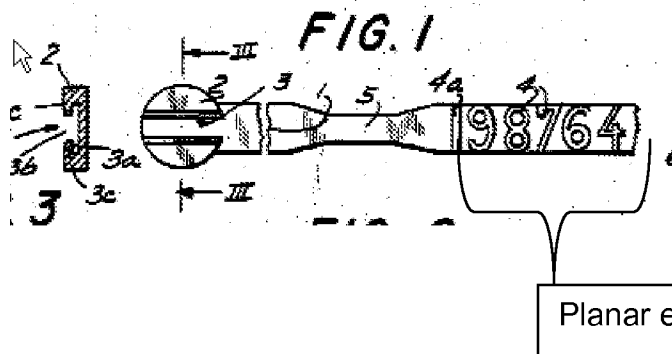
III. PRODUCT CLAIMS – NONFUNCTIONAL PRINTED MATTER DOES NOT DISTINGUISH CLAIMED PRODUCT FROM OTHERWISE IDENTICAL PRIOR ART PRODUCT

Where the only difference between a prior art product and a claimed product is printed matter that is not functionally related to the product, the content of the printed matter will not distinguish the claimed product from the prior art. In re Ngai, F.3d, 2004 WL 1068957 (Fed. Cir. May 13, 2004)(Claim at issue was a kit requiring instructions and a buffer agent. The Federal Circuit held that the claim was anticipated by a prior art reference that taught a kit that included instructions and a buffer agent, even though the content of the instructions differed.). See also In re Gulack, 703 F.2d 1381, 1385-86, 217 USPQ 401, 404 (Fed. Cir. 1983)("Where the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability [T]he critical question is whether there exists any

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new and unobvious functional relationship between the printed matter and the substrate.").

Regarding claim 85, Schumm discloses a card (fig. 16) comprising a plurality of detachable elongate members, each of the members being frangibly joined to the card for detachment therefrom, an enlarged portion being defined in at least one of the members for insertion in use through a hole (3a) located in the member, the enlarged portion being a planar enlarged portion arranged on the member for insertion through a hole located in the member, and the enlarged portion including a raised portion (4) thereon to provide that part of the enlarged portion with a thickness greater than a remainder of the enlarged portion. (see figure below)



However, Schumm states that an elongate and enlarged portion of the member has a transverse width substantially the same as a corresponding transverse width of the hole. It should be noted that substantially is a broad term and that the friction between the side walls of the hole and the enlarged portion is necessary in order for the device to function properly; thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to have included in Schumm an enlarged

portion having a transverse width that is greater than the corresponding transverse width of the hole in order to impart friction between the hole side walls and the enlarged portion.

Regarding claim 86, Schumm discloses the card constitutes all the members joined and formed together as shown in Figure 16. And note that col.3 describes the material of each member.

Response to Arguments

Applicant's arguments filed April 8, 2008 have been fully considered but they are not persuasive.

Applicant argues that "there is no disclosure or suggestion that the tightening device should be used to differentiate items let alone the cables of two or more respective appliances," and therefore the rejection of claim 70 should be revoked. Examiner respectfully disagrees. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

Applicant argues that the Schumm hole does not fulfill the claim limitations since the hole is described in the specification differently than the hole shown in Schumm. However, it is noted that the features upon which applicant relies (i.e., that the hole "is defined so that the periphery of the hole is entirely surrounded by the material of the

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member") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

Applicant argues that claim 71 limitations have not been met. Examiner respectfully disagrees. See rejection above.

Applicant argues that the Schumm card does not fulfill the claim limitations since the card is described in the specification differently than the card shown in Schumm. However, it is noted that the features upon which applicant relies (i.e., that the card "refers to any panel or panel like member from which the elongated members can be detached and leave behind a card skeleton, the card being flat in shape and comprising at least a border frame selection") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARCUS MENEZES whose telephone number is (571)272-6284. The examiner can normally be reached on M-F 8:30-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vic Batson can be reached on 571-272-6987. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MM/

/Robert J. Sandy/
Primary Examiner, Art Unit 3677